

REMARKS

Applicant wishes to thank the Examiner for discussing the outstanding Office Action and pending claims with the Applicant and the inventor David Louis Kirschman on November 17, 2006. During the interview, various issues were discussed. It was discussed that Applicant believes the Ritland reference does not teach of a first and second support that cooperate to define a compression body receiving area for receiving a compression body of the type recited in Applicant's claim 1 for example.

It was also discussed that various approaches to further focusing the claims would distinguish further over Ritland. Applicant has amended the rejected independent claims to include a reference that the compression or artificial body is generally planar.

Applicant has cited a new reference, namely, Armin et al. that recently came to Applicant's attention and which Applicant has cited in a separate Supplemental Invention Disclosure Statement. Note that the Armin et al. reference discloses an article including a spinal prosthesis having a unitary body with at least three attachment points attachable to spinal structure, the unitary body includes a flexure assembly positioned between first and second attachment members, wherein flexure of the flexure assembly permits movements of the first attachment member relative to the second attachment member.

Applicant believes that all previously allowed claims remain allowable in that none of the references suggest of an adjustable tensioner or adjustable fastener for adjustably tightening or securing the first support to the second support, for example. All other rejected claims have been amended as shown and are believed to be patentable over all references of record.

Note that Applicant has amended the rejected claims to now recite that the compression body is generally planar. In contrast, note that the elastomeric member 22 and 42 in Armin, et al. clearly require the use of a non-planar member. Moreover, Ritland does not show any planar member. Also, note that there is no adjustor for

adjustably fixing a first support to a second support as recited, for example, in claims 6 and 7.

Referring now to the Office Action, the Examiner's approval of the drawing is respectfully appreciated.

On page 2 of the Office Action, the Examiner objected to claims 30-36 and 39-50 because they depended from a cancelled claim. Claim 92 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has amended the claim as shown and believes it is now in good form.

On page 3 of the Office Action the Examiner rejected the claims 1-6, 8-16, 18-21, 26, 37, 38, 52-57, 60, 61, 64, 66-70, 74-87, 90-93, 98 and 99 under 35 U.S.C. 102(e) as being anticipated by Ritland (2003/0191470). In view of the claims as now presented and for the reasons discussed below, Applicant believes that the rejected claims are not anticipated by Ritland.

Ritland discloses a dynamic fixation device is provided that allows the vertebrae to which it is attached to move in flexion with the normal physiological limits of motion, while also providing structural support that limits the amount of translation motion beyond normal physiological limits. Ritland references a flexibly portion and two ends that are adapted for connection to pedicle screws.

In contrast, notice in Applicant's amended independent claims 1, 6, 7, 16, 17, 26, 28, 39, 53, 64, 65, 71, 72, 88, 98, 99, the claims recite that the first and second support include a receiving area or artificial body receiving area. The claims have been further amended to recite that the compression body, for example, received in the receiving area is generally planar.

Neither Ritland nor any of the other references of record teach of the embodiments as now recited in these independent claims. For all the forgoing reasons and in view of the claims as now presented, Applicant believes that these claims are patentable over the art of record.

On page 4 of the Office Action, the Examiner rejected claims 7, 17, 28, 29, 65, 71-73, 88 and 89 as being rejected upon a dependent base claims, but indicated that they would be allowable if rewritten in an independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended these claims as shown and believes that they are now in good form. Applicant again appreciates the allowance of these claims. For consistency, Applicant has also rewritten the dependent claims, such as claim 6, that refer to an adjusting means, adjustable tensioner, fastener or the like. Applicant respectfully submits that such means, adjustable tensioner or fastener is not shown by any of the prior art references, whether taken alone or in combination, because the prior art fails to teach of any device having an adjustable tensioner or fastener.

Applicant has also added new claims 129-132 to depend from allowed dependent claims to further define, for example, the artificial body referred to in the allowed dependent claims.

For all the forgoing reasons, and in view of the claims as now presented, Applicant believes that these claims are in condition for allowance and such allowance is respectfully requested.

Applicant is filing concurrently under separate cover a request for a two month extension of time.

The Commissioner is hereby authorized to charge any additional fees under 37 C.F.R. 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-1287. Applicant hereby provides a general request for any extension of time which may be required at any time during the prosecution of the application. The Commissioner is also authorized to charge any fees which have not been previously paid for by check and which are required during the prosecution of this application to Deposit Account No. 50-1287. (Should Deposit Account No. 50-1287 be deficient, please charge any further deficiencies to Deposit Account No. 10-0220).

Applicant invites the Examiner to contact the undersigned via telephone with any questions or comments regarding this case.

Applicant respectfully requests an interview with the Examiner if the Examiner does not believe this amendment places the application in condition for allowance.

Reconsideration and favorable action are respectfully requested.

Respectfully submitted,

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